

**FILED**Clerk  
District Court

MAY 18 2006

For The Northern Mariana Islands

By \_\_\_\_\_  
(Deputy Clerk)

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8 Attorney for Plaintiffs

9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE  
 11 NORTHERN MARIANA ISLANDS

12 LI YING HUA, LI ZHENG ZHIE and XU JING JI, ) CASE NO. CV 05-00019

13 Plaintiffs, )

14 vs. )

15 JUNG JIN CORPORATION, a CNMI corporation, )  
 16 ASIA ENTERPRISES, INC., a CNMI corporation, )  
 17 PARK HWA SUN, KIM HANG KWON, )  
 18 KSK CORPORATION, a CNMI corporation )  
 19 and KIM KI SUNG, )

20 Defendants. )

FIRST AMENDED VERIFIED  
 COMPLAINT FOR VIOLATIONS OF  
 THE FAIR LABOR STANDARDS ACT  
 AND SUPPLEMENTAL STATE LAW  
 CLAIMS

21 COMES NOW, Plaintiffs LI YING HUA, LI ZHENG ZHIE and XU JING JI with the  
 22 following Verified Complaint against JUNG JIN CORPORATION, ASIA ENTERPRISES, INC.,  
 23 PARK HWA SUN, KIM HANG KWON, KSK CORPORATION and KIM KI SUNG as follows:

24 JURISDICTION

25 1. The Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* ("FLSA"), applies to this matter  
 26 through the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political  
 27 Union with the United States of America, Article V, §502(a)(2).

2. This Court has jurisdiction over Plaintiffs' FLSA claims pursuant to 28 U.S.C. § 1331  
 (federal question jurisdiction), 28 U.S.C. § 1337(a) (proceedings arising under any Act of Congress  
 regulating commerce).

ORIGINAL





1 to a valid and binding contract between Mr. LI and DEFENDANTS approved by the CNMI  
2 Department of Labor. Mr. LI's employment contract was renewed by the parties in 2003, 2004 and  
3 2005 and the most recent contract renewal term was not due to expire until on or about January 24,  
4 2006. DEFENDANTS terminated Mr. LI's contract and his employment, without cause and without  
5 prior written notice, on about April 25, 2005.

6 21. Plaintiff Ms. XU began her employment with DEFENDANTS in about December 2003  
7 pursuant to a valid and binding contract between Ms. XU and DEFENDANTS approved by the  
8 CNMI Department of Labor. Ms. XU's employment contract was renewed by the parties in 2004 and  
9 2005 and the most recent contract renewal term was not due to expire until on or about January 24,  
10 2006. DEFENDANTS terminated Ms. XU's contract and her employment, without cause and  
11 without prior written notice, on about April 25, 2005.

12 22. Plaintiff Ms. LI began her employment with DEFENDANTS in about April 2003 during  
13 a pending labor case and, thereafter, continued her employment with DEFENDANTS pursuant to  
14 a valid and binding contract between Ms. LI and DEFENDANTS approved by the CNMI  
15 Department of Labor. Ms. LI's employment contract was renewed by the parties in 2005 and the  
16 most recent contract renewal term was not due to expire until on or about January 14, 2006. Ms. LI  
17 was constructively terminated by DEFENDANTS due to numerous actions by DEFENDANTS that  
18 made her continued employment with DEFENDANTS intolerable and untenable.

19 23. The series of one-year employment contracts and employment contract renewals  
20 identified above, by and between each plaintiff and DEFENDANTS, collectively comprise each  
21 plaintiff's respective "Employment Contract" as the term is used herein and as the term relates to the  
22 claims and allegations contained herein.

23 24. At no time during the term of their employment with DEFENDANTS were any of the  
24 Plaintiffs provided with a copy of their respective Employment Contracts or any part thereof.

25 25. At all times relevant to this action, Plaintiffs, and each of them, were employees of  
26  
27

1 DEFENDANTS within the meaning of § 203(c)(1) of the FLSA and § 9212(c) of the  
2 Commonwealth Minimum Wage and Hour Act, 4 C.M.C. §§ 9211 *et seq.* (2000) (“MWHIA”).

3 26. At all times relevant to this action, DEFENDANTS were employers of Plaintiffs, and  
4 each of them, within the meaning of § 203(d) of the FLSA and § 9212(f) of the MWHIA.

5 27. At all times relevant to this action, Plaintiffs were employed by DEFENDANTS within  
6 the meaning of § 203(g) of the FLSA and § 9212(d) of the MWHIA.

7 28. At all times relevant to this action, Plaintiffs were employed by DEFENDANTS in  
8 Saipan, Commonwealth of the Northern Mariana Islands.

9 29. At all times relevant to this action, DEFENDANTS were an enterprise within the  
10 meaning of § 203(r)(1) of the FLSA.

11 30. At all times relevant to this action, DEFENDANTS were an enterprise engaged in  
12 commerce or in the production of goods for commerce within the meaning of § 203(s)(1) of the  
13 FLSA.

14 31. At all times relevant to this action, Plaintiffs, as employees of DEFENDANTS, were  
15 engaged in commerce within the meaning of § 207(a)(1) of the FLSA.

16 32. Plaintiffs, and each of them, worked more than forty (40) hours per week for  
17 DEFENDANTS during one or more weeks that Plaintiffs were employed by DEFENDANTS.

18 33. At all times while employed by DEFENDANTS, Plaintiffs were employed, and actually  
19 performing work, in a job category or categories that are not exempt from the provisions of the FLSA  
20 and/or the MWHIA.

21 34. DEFENDANTS failed to pay Plaintiffs the applicable minimum wage for all hours  
22 Plaintiffs worked for DEFENDANTS as required by § 9221(a)(2) of the MWHIA, and, upon  
23 information and belief, by Plaintiffs’ respective Employment Contracts.

24 35. DEFENDANTS failed to pay Plaintiffs the applicable overtime premium for hours  
25 worked by Plaintiffs for DEFENDANTS in excess of forty (40) hours in each work week as required  
26

1 by § 207(a) of the FLSA, by § 9222 of the MWIIA, and, upon information and belief, by Plaintiffs'  
2 respective Employment Contract.

3 36. DEFENDANTS failed to maintain full and accurate records of the hours actually worked  
4 by Plaintiffs as required by § 215(a)(5) of the FLSA and § 9232(a) of the MWIIA.

5 37. Throughout her term of employment with DEFENDANTS, Plaintiff Ms. LI was provided  
6 housing by DEFENDANTS at a cost to Ms. LI of \$150.00 per month which was deducted by  
7 DEFENDANTS from her salary.

8 38. Throughout their term of employment with DEFENDANTS, Plaintiffs Mr. LI and Ms.  
9 XU were provided housing by DEFENDANTS at a cost to them of \$150.00 per month which was  
10 deducted by DEFENDANTS from their salary.

11 39. On several occasions, DEFENDANTS would deduct various amounts from Plaintiffs'  
12 salary for, among other things, labor contract processing fees and cash register shortages.

13 40. All said deductions taken from Plaintiffs' wages are in violation of § 4434(c) of the  
14 Commonwealth Nonresident Workers Act, 3 C.M.C. §§ 4411 *et seq.* (2000).

15 41. Said deductions taken from Plaintiffs' wages also decreased Plaintiffs' minimum hourly  
16 wage below that required by the MWHIA and, upon information and belief, Plaintiffs' respective  
17 Employment Contracts.

18 42. Said deductions taken from Plaintiffs' wages also decreased the overtime premium to  
19 which Plaintiffs are entitled under the FLSA, the MWHIA and, upon information and belief,  
20 Plaintiffs' respective Employment Contract.

21 43. All of the actions and omissions alleged above were undertaken by DEFENDANTS either  
22 directly or through their agent or agents.

23 44. All of the actions and omissions alleged above were willful within the meaning of § 9243  
24 of the MWIIA, and with regard to the applicability of the statute of limitations on FLSA claims and  
25 claims pursuant to the Commonwealth Nonresident Workers Act, 3 C.M.C. §§ 4411 *et seq.* (2000).  
26  
27

FIRST CAUSE OF ACTION  
(FLSA Violation - Unpaid Overtime Compensation)

45. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

46. DEFENDANTS have violated the provisions of § 207(a) of the FLSA by failing to pay Plaintiffs overtime compensation in the amount of one and one-half times their regular pay rate for all of the hours worked by Plaintiffs in excess of forty (40) hours in each work week.

47. Plaintiffs are entitled to payment of unpaid overtime compensation from DEFENDANTS, jointly and severally, calculated based on a pay rate of \$3.05 per hour as adjusted by the regular rate provisions of § 207(c) of the FLSA, and an additional equal amount as liquidated damages.

48. Plaintiffs are also entitled to costs of the action and reasonable attorney's fees pursuant to § 216(b) of the FLSA.

SECOND CAUSE OF ACTION  
(MWHIA Violation - Unpaid Minimum Wage)

49. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

50. DEFENDANTS violated the provisions of § 9221(a)(2) of the MWHIA by failing to pay Plaintiffs a minimum wage of \$3.05 per hour for all of the hours worked by Plaintiffs each work week.

51. Plaintiffs are entitled to payment of unpaid minimum wages from DEFENDANTS and an additional equal amount as liquidated damages for DEFENDANTS' willful violation.

52. Plaintiffs are also entitled to costs of the action and reasonable attorney's fees pursuant to § 9244(b) of the MWIIA.

THIRD CAUSE OF ACTION  
(MWHIA Violation - Unpaid Overtime Compensation)

53. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

54. DEFENDANTS violated the provisions of § 9222 of the MWIIA by failing to pay Plaintiffs overtime compensation in the amount of one and one-half times their regular pay rate for

1 all of the hours worked by Plaintiffs in excess of forty (40) hours in each work week.

2 55. Plaintiffs are entitled to payment of unpaid overtime compensation from  
3 DEFENDANTS, jointly and severally, calculated based on a pay rate of \$3.05 per hour as adjusted  
4 by the regular rate provisions of § 207(c) of the FLSA, and an additional equal amount as liquidated  
5 damages for DEFENDANTS' willful violation.

6 56. Plaintiffs are also entitled to costs of the action and reasonable attorney's fees pursuant  
7 to § 9244(b) of the MWIA.

8 FOURTH CAUSE OF ACTION  
9 (Breach of Contract)

10 57. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

11 58. At all times relevant to this action, Plaintiffs, and each of them, had valid and binding  
12 Employment Contracts with DEFENDANTS.

13 59. Plaintiffs' Employment Contracts with DEFENDANTS were not due to expire until  
14 January 2006.

15 60. Upon information and belief, one of the terms of Plaintiffs' respective Employment  
16 Contracts with DEFENDANTS is that Defendant pay Plaintiff \$3.05 per hour.

17 61. Upon information and belief, another of the each Plaintiffs' respective Employment  
18 Contract's terms was that DEFENDANTS pay Plaintiffs one and one-half times their regular rate  
19 as overtime compensation for hours worked in excess of forty (40) hours each week of her  
20 employment.

21 62. Upon information and belief, pursuant to Plaintiffs' respective Employment Contracts,  
22 said overtime compensation was to be paid by check in bi-weekly intervals.

23 63. Upon information and belief, also pursuant to the Employment Contracts,  
24 DEFENDANTS were prohibited from deducting from Plaintiffs' wages amounts other than those  
25 specifically set forth in the Employment Contract.

26 64. Upon information and belief, Plaintiffs' Employment Contracts were terminable only for  
27



1 cause with the contractually required notice to Plaintiffs.

2 65. By failing and refusing to pay Plaintiffs their contractual minimum wage of \$3.05 per  
3 hour, by failing and refusing to pay Plaintiffs overtime compensation for all of the hours Plaintiffs  
4 worked in excess of forty (40) hours in each week of their employment, by failing and refusing to pay  
5 such amounts by check in bi-weekly intervals, and by making deductions from Plaintiffs' salary in  
6 contravention of the terms of the contract and the NWA, DEFENDANTS materially breached each  
7 plaintiff's respective Employment Contract.

8 66. Additionally, DEFENDANTS dismissed from their employ Plaintiffs Mr. LI and Ms. XU  
9 without cause and without the contractually required written notice and, among various other illegal  
10 actions, Defendant KIM's sexual harassment of Ms. LI, at the very least, amounted to a constructive  
11 termination, all of which constitute material breaches of Plaintiffs' respective Employment  
12 Contracts.

13 67. Because of DEFENDANTS' material breach of the Employment Contracts, Plaintiffs,  
14 and each of them, are entitled to expectation damages, incidental and consequential damages, an  
15 equal amount for liquidated damages, and costs and reasonable attorney's fees.

16 FIFTH CAUSE OF ACTION  
17 (Illegal Deductions)

18 68. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

19 69. Throughout the term of Plaintiffs' employment with DEFENDANTS, DEFENDANTS  
20 regularly deducted amounts from Plaintiffs' wages for, among other things, housing provided by  
21 DEFENDANTS, labor contract processing fees and cash register shortages.

22 70. Upon information and belief, said deductions from Plaintiffs' wages were not expressly  
23 provided for in Plaintiffs' Employment Contracts.

24 71. Said deductions from Plaintiffs' wages were also for amounts for which DEFENDANTS,  
25 not Plaintiffs, were responsible.

26 72. Said deductions from Plaintiffs' wages were illegal deductions in that they violate the  
27

1 provisions of 3 C.M.C. § 4434(c).

2 73. Said deductions from Plaintiffs' wages were also illegal deductions in that they reduced  
3 Plaintiffs' hourly wage rate below the minimum wage mandated by 4 C.M.C. § 9221(a)(2) and  
4 Plaintiffs' overtime premium below that mandated by § 207(a) of the FLSA.

5 74. Plaintiffs are entitled to reimbursement from DEFENDANTS, jointly and severally, for  
6 all illegal deductions from Plaintiffs' wages, and an additional equal amount as liquidated damages.

7 75. Plaintiffs are also entitled to costs of the action and reasonable attorney's fees pursuant  
8 to § 9244(b) of the MWHIA and 3 C.M.C. § 4447(d).

9 SIXTH CAUSE OF ACTION  
10 (FLSA Successor Liability)

11 76. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

12 77. On January 1, 2006, DEFENDANTS effected the transfer of their operating businesses  
13 to KSK.

14 78. Thereafter, Defendant PARK departed the Commonwealth for South Korea with no  
15 plans of returning to Saipan.

16 79. On February 1, 2006, a subpoena was issued for the deposition of Kim Sung Eun, the  
17 purported president of KSK CORP. as shown in documents on file with the Commonwealth  
18 government.

19 80. On March 9, 2006, at the time, date and place indicated in the subpoena to Kim Sung  
20 Eun, KSK-KIM produced copies of documents responsive to the subpoena.

21 81. On March 9, 2006, at the time, date and place indicated in the subpoena to Kim Sung  
22 Eun, KSK-KIM appeared to testify on her behalf.

23 82. In about August 2005, KSK-KIM learned that Plaintiffs had filed a lawsuit alleging that  
24 defendants PARK and KIM had failed to pay all of the wages they were due.

25 83. In about January 2006, the DEFENDANTS agreed that KSK-KIM should "take over"  
26 DEFENDANTS' laundry business and poker businesses in exchange for the "outstanding debts."

1 84. Defendant KSK-KIM agreed and prepared the documents he believed were necessary to  
2 accomplish the transfer, including a Bill of Sale.

3 85. As of January 1, 2006, all of the assets of DEFENDANTS' Welcome Poker, Welcome  
4 Landry and Welcome Market were purportedly transferred to KSK CORP. in exchange for the alleged  
5 \$26,000.00 debt of KIM and the alleged \$100,000.00 debt of PARK and/or their alter ego companies  
6 defendants ASIA and JUNG JIN.

7 86. KSK CORP. is an acronym for Ki Sung Kim, KSK-KIM.

8 87. KSK changed the name of Welcome Laundry and Welcome Poker to Shany Laundry and  
9 Shany Two Poker and now purports to operate what was known as Welcome Market as part of what  
10 is now know as Shany Laundry. As of May 2006, however, KSK has yet to change some or all of the  
11 signs that indicate that the name of the businesses have changed. Some or all of the signs at the  
12 purportedly transferred businesses still reflect the names Welcome Laundry and Welcome Poker.

13 88. In addition to taking over the leases of the premises of the businesses in the name of KSK  
14 CORP., KSK purportedly transferred all of the employees of defendants to the employ of KSK  
15 CORP. (with the exception of two of the employees that were working in Welcome Poker), and KSK  
16 purportedly caused the transfer of the licenses for the poker machines of Welcome Poker to KSK  
17 CORP.

18 89. As of the date of KSK-KIM's deposition, KSK had yet to transfer the utility service for  
19 Welcome Poker, Welcome Laundry and Welcome Market into the name of KSK CORP., but KSK-  
20 KIM stated that KSK pays the utility bills when they come due although KSK-KIM has no idea in  
21 who's name the utility accounts are currently held.

22 90. In the Ninth Circuit, there is successor liability for violations of the FLSA.

23 91. Although the transfers from DEFENDANTS to KSK could be avoided as fraudulent  
24 transfers, for purposes of Plaintiffs' successor liability allegations herein, KSK is a bona fide successor  
25 to the business interests of DEFENDANTS who are liable to Plaintiffs under the FLSA.  
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1 92. Prior to their acquisition of the operating business interests of DEFENDANTS, KSK had  
2 knowledge of Plaintiffs' wage and hour claims against DEFENDANTS herein.

3 93. DEFENDANTS have shown that they are or will be unable to provide adequate relief  
4 directly for the FLSA damages of Plaintiffs, particularly in light of the fact that DEFENDANTS have  
5 purportedly transferred all or substantially all of their operating business assets to KSK.

6 94. KSK's acts of conducting essentially the same business of DEFENDANTS without a  
7 fundamental change in operating conditions, together with their prior knowledge of Plaintiffs' claims  
8 in this lawsuit, among other facts alleged herein, makes KSK, jointly and severally, a successor to the  
9 FLSA liability of the DEFENDANTS in this matter.

10 PRAYER FOR RELIEF:

11 Accordingly, Plaintiffs pray for the following relief:

12 A. That DEFENDANTS, jointly and severally, pay Plaintiffs the applicable minimum wage  
13 for all hours worked by Plaintiffs for DEFENDANTS;

14 B. That DEFENDANTS, jointly and severally, pay Plaintiffs the applicable overtime  
15 premium for all hours worked by Plaintiffs for DEFENDANTS in excess of forty (40) hours in each  
16 work week;

17 C. That DEFENDANTS, jointly and severally, pay Plaintiffs expectation, incidental and  
18 consequential damages for DEFENDANTS' material breach of the Employment Contracts;

19 D. That DEFENDANTS, jointly and severally, repay Plaintiffs for all deductions from  
20 Plaintiffs' salary not authorized by the Employment Contract, Commonwealth and federal law;

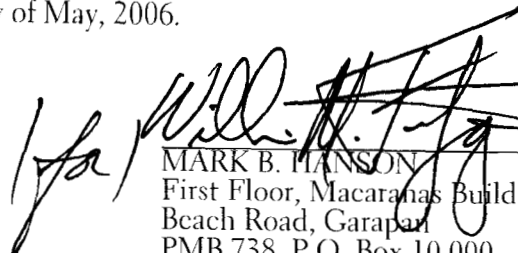
21 E. That DEFENDANTS, jointly and severally, pay Plaintiffs an equal amount as liquidated  
22 damages;

23 F. That DEFENDANTS, jointly and severally, pay Plaintiffs reasonable attorney's fees and  
24 costs of this action.

25 G. That KSK CORP. and KSK-KIM, jointly and severally, pay Plaintiffs' FLSA damages  
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1 awarded herein, including costs and reasonable attorney's fees of this action.  
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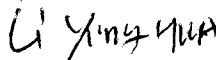
3 Submitted this 18 day of May, 2006.  
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5   
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11 Attorney for Plaintiffs  
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## 1 VERIFICATION OF COMPLAINT

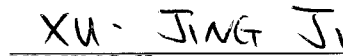
2 I, LI YING HUA, hereby certify that the forgoing complaint has been translated to me from  
3 English into Mandarin Chinese and that I have read and understood the allegations and claims made  
4 herein and that I consent to be a party plaintiff herein. I further certify that the factual statements  
5 made herein are true and correct to the best of my knowledge and belief and that I verified the  
6 accuracy of the above Complaint this 17<sup>th</sup> day of May, 2006.

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8   
9 LI YING HUA  
Plaintiff

10 I, LI ZHENG ZHE, hereby certify that the forgoing complaint has been translated to me from  
11 English into Mandarin Chinese and that I have read and understood the allegations and claims made  
12 herein and that I consent to be a party plaintiff herein. I further certify that the factual statements  
13 made herein are true and correct to the best of my knowledge and belief and that I verified the  
14 accuracy of the above Complaint this 17<sup>th</sup> day of May, 2006.

15  
16   
17 LI ZHENG ZHE  
Plaintiff

18 I, XU JING JI, hereby certify that the forgoing complaint has been translated to me from  
19 English into Mandarin Chinese and that I have read and understood the allegations and claims made  
20 herein and that I consent to be a party plaintiff herein. I further certify that the factual statements  
21 made herein are true and correct to the best of my knowledge and belief and that I verified the  
22 accuracy of the above Complaint this 17<sup>th</sup> day of May, 2006.

23  
24   
25 XU JING JI  
26 Plaintiff  
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